

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3351 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHRAFKHAN AJABKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 24/11/97

ORAL JUDGEMENT

1. The petitioner is at present under detention pursuant to the detention order dated 22.3.1997 passed by the Police Commissioner, City of Ahmedabad, invoking powers under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred as to the "Act") so as to prevent him from further doing any anti social activities injurious to the maintenance of public order. By this application under Article 226 of the Constitution of India, therefore, the petitioner

calls the legality and validity of the order in question.

2. The Commissioner of Police when visited or inspected several police stations found that against the petition 5 complaints were lodged. Before Dariapur Police Station, as per the complaint lodged, the petitioner is alleged to have committed the offence punishable under section 307, 143, 147, 148, 149, 336, 120B, 186, 188 etc of IPC. As per the FIR Lodged with the Gomatipur Police Station, the petitioner is alleged to have committed the offence under section 307 and 120B of IPC alongwith section 25(1)(c) of the Arms Act. As per two complaints lodged with the DCB Police Station, the petitioner is alleged to have committed the offences punishable under section 25(1)(b)(a) of the Arms Act. In the last complaint lodged with the DCB Police Station, what is alleged is that the petitioner committed the offences under section 384, 506(1), 120B, 323 read with section 114 of IPC. During the further investigation, it was noticed that the petitioner was habitual offender and was dangerous person within the meaning of the Act. He was, by resorting coercion, force, and violence, causing injury or forcing the people to part with money or was committing self-willed acts and thereby he was disturbing the public order and was putting the people to peril. The people had, therefore, cultivated the feelings of insecurity and were not ready to make statement against the petitioner. Considering his such activities, the Police Commissioner was of the opinion that it was not at all possible to control his activities taking necessary action under the General Laws. According to him, the only way out was to pass the detention order under the Act and, detain the petitioner in custody. He, therefore, passed the order in question and pursuant to that order, the petitioner, at present, is in custody.

3. The learned advocate representing the petitioner has, nodoubt challenged the order on different grounds, but when the application is likely to be disposed of only on one ground going to the root of the case, I do not think it necessary to deal with all other grounds. I will, therefore, confine to the only ground going to the root of the case.

4. It is contended that the petitioner made the representation on 24.10.1997, and though days and months have passed, the same is not disposed of. With the result, his right to take further action was marred, and because of the delay, his continuous detention is illegal.

5. As per Article 22(5) of the Constitution of India, whenever the person is detained under the preventive detention laws, the authority making the order of detention is under obligation to communicate the grounds on which the order has been passed so as to afford him earliest opportunity of making a representation. Further, the representation if made, has to be disposed of as soon as may be possible at the earliest because owing to delay without any justification, the continuous detention would be rendered illegal. As submitted before me by the learned AGP Mr Dave, that the representation was received by the office of the Hon'ble Chief Minister on 27.10.1997, and thereafter, it was sent to the Home Department, which was received by the Home Department on 11.11.1997 for doing needful in the matter. Thereafter, on 15.11.1997 the representation was considered and disposed of passing appropriate order. It follows from such dates that for about 15 days after the receipt of the representation, no action has been taken, and, after the Home Department received the representation for about 4 days, no action is taken though under the above stated provision of the Constitution of India, the authority has to deal with the same at the earliest. If that is not done, the authority has to explain the delay, and if, the delay is satisfactorily explained, the delay would not be fatal and detention in that case cannot be held bad. But if the delay is not explained filing the affidavit, it can then be held that without any just cause the delay has been caused and the representation was though possible to be disposed of at the earliest, was not taken on hand treating as casual and overlooking the importance thereof, and also the mandate of the Constitution of India. In this case, nodoubt, the affidavit of the authority passing the detention order is passed, is filed, but the same is silent on the point of delay. It may be because the affidavit came to be filed prior to the amendment and introduction of the case of the representation came into being; but that cannot help the authority because he was not prevented to file further affidavit soon after the amendment was carried out and plea about delay in disposal of the representation came to be inserted by way of amendment. When affidavit is not filed and the delay is not explained, the continuous detention from the date of the order is illegal and, therefore, the order of detention is required to be quashed.

6. For the aforesaid reasons, the petition is allowed. The order of detention being illegal is hereby

quashed. The petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule made absolute.
